

LEGISLATIVE COUNCIL  
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95TH CONGRESS  
2D SESSION

# S. 3314

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## IN THE SENATE OF THE UNITED STATES

JULY 18 (legislative day, MAY 17), 1978

Mr. METZENBAUM introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, and for other purposes, and to amend title 5 of the United States Code to permit a person aggrieved by a constitutional injury to initiate and participate in a disciplinary inquiry of the offending act or omission.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 1346 (b) of title 28, United States Code, is
- 4 amended by striking the period at the end of the section and
- 5 adding the following: “, or where the claim sounding in tort
- 6 for money damages arises under the Constitution of the

1 United States when such employee of the Government is  
2 acting within the scope of his office or employment, or under  
3 the color thereof, such liability to be determined in accord-  
4 ance with applicable Federal Law.”.

5 SEC. 2. (a) Section 2672 of title 28, United States Code,  
6 is amended by inserting in the first paragraph the following  
7 language after the word “occurred” and before the colon:  
8 “, or where the claim sounding in tort for money damages  
9 arises under the Constitution of the United States when such  
10 employee of the Government is acting within the scope of  
11 his office or employment, or under the color thereof, such  
12 liability to be determined in accordance with applicable Fed-  
13 eral law”.

14 (b) Section 2672 of title 28, United States Code, is  
15 further amended by inserting in the first paragraph the  
16 following language after the amount “\$25,000” and before  
17 the word “shall”, “or any award, compromise, or settlement  
18 based on a claim arising under the Constitution of the United  
19 States”.

20 SEC. 3. (a) Section 2674 of title 28, United States  
21 Code, is amended by inserting in the first paragraph the  
22 following language after the word “claims” and before the  
23 comma: “based upon negligent or wrongful acts or omis-  
24 sions”.

1 (b) Section 2674 of title 28, United States Code, is  
2 further amended by adding as a third paragraph the  
3 following:

4 "The United States shall be liable, respecting the provi-  
5 sions of this title relating to tort claims arising under the  
6 Constitution of the United States, to the same extent as  
7 entitlement to compensation is recognized under the tort law  
8 of the place where the violation complained of occurred, but  
9 shall not be liable for interest prior to judgment or for puni-  
10 tive damages: *Provided, however,* That for a claim arising  
11 under the Constitution of the United States, such compensa-  
12 tion shall not be less than liquidated damages of \$1,000,  
13 plus a reasonable attorney's fee and other litigation costs  
14 reasonably incurred, except that when the violation com-  
15 plained of continues for more than one day, liquidated dam-  
16 ages shall be the higher of \$1,000 or \$100 a day for each  
17 day the violation continues, up to a maximum of \$25,000  
18 plus a reasonable attorney's fee and other litigation costs  
19 reasonably incurred: *Provided further, however,* That the  
20 United States shall not assert as a defense to a tort claim  
21 arising under the Constitution of the United States, the abso-  
22 lute or qualified immunity of the employee whose violation  
23 is complained of or his reasonable good-faith belief in the  
24 lawfulness of his conduct, except that the United States may

1 assert such a defense if the violation complained of is that of  
2 a Member of Congress, a judge, a prosecutor, or a person  
3 performing the function of such a person.”.

4 SEC. 4. (a) Section 2675 (a) of title 28, United States  
5 Code, is amended by inserting the following language after  
6 “employment,”: “or upon a tort claim for money damages  
7 arising from the violation of the Constitution of the United  
8 States by any employee of the Government while acting  
9 within the scope of his office or employment or under the  
10 color thereof,”.

11 (b) Section 2675 (a) of title 28 is further amended by  
12 changing the period at the end thereof to a colon and adding  
13 thereafter the following language: “*Provided, however, That*  
14 class actions in conformity with the requirements of the Fed-  
15 eral Rules of Civil Procedure may be instituted for money  
16 damages for a tort arising under the Constitution of the  
17 United States if the claim presented to the appropriate Fed-  
18 eral agency under section 2675 (a) of title 28 expressly  
19 asserts the representative nature of the claim and specifically  
20 describes the class, the common interests of the claimant and  
21 such class, and the basis upon which the claimant believes  
22 he can fairly and adequately protect the interests of the class  
23 as their representative.”.

24 SEC. 5. Section 2678 of title 28, United States Code, is  
25 amended by inserting at the beginning thereof the words

1 "Except as otherwise provided by the third paragraph of sec-  
2 tion 2674 of this title," and changing the word "No" to  
3 "no".

4 SEC. 6. Section 2679 (b) of title 28, United States Code,  
5 is amended to read as follows:

6 "(b) (1) The remedy against the United States pro-  
7 vided by sections 1346 (b) and 2672 of this title for tort  
8 claims for injury or loss of property or personal injury or  
9 death resulting from the negligent or wrongful act or omis-  
10 sion of any employee of the Government while acting within  
11 the scope of his office or employment or for tort claims arising  
12 from the violation of the Constitution of the United States  
13 by an employee of the Government, other than an individual  
14 who is no longer an employee of the Government at the time  
15 a claim is presented to a Federal agency under this chapter  
16 and other than an appointee of the President as defined in  
17 chapter 78 of title 5, United States Code, while acting within  
18 the scope of his authority or with a reasonable good-faith  
19 belief in the lawfulness of his conduct is exclusive of any  
20 other civil action or proceeding arising out of or relating to  
21 the same subject matter against the employee whose act or  
22 omission or violation gave rise to the claim, or against the  
23 estate of such employee.

24 "(2) In no event shall a tort claim arising under the  
25 Constitution of the United States by an employee of the Gov-

1 ernment while not acting within the scope of his authority or  
2 with a reasonable good-faith belief in the lawfulness of his  
3 conduct and by an individual who is no longer an employee  
4 of the Government at the time a claim is presented to a Fed-  
5 eral agency under this chapter and by an appointee of the  
6 President as defined in chapter 78 of title 5, United States  
7 Code, lie against both the employee in his individual capacity  
8 and against the United States under sections 2675 and 1346  
9 (b) of title 28, United States Code.”.

10 SEC. 7. Section 2679 (d) of title 28, United States Code,  
11 is amended to read as follows:

12 “(d) (1) Upon certification by the Attorney General at  
13 any time before trial that the defendant employee was acting  
14 within the scope of his office or employment, or in claims aris-  
15 ing under the Constitution of the United States that the  
16 employee, other than an individual who is no longer an  
17 employee of the Government at the time a claim is presented  
18 to a Federal agency under this chapter and other than an  
19 appointee of the President as defined in chapter 78 of title 5,  
20 United States Code, was acting within the scope of his author-  
21 ity or with a reasonable good faith belief in the lawfulness of  
22 his conduct, at the time of the incident out of which the suit  
23 arose, any such civil action or proceeding commenced in a  
24 United States district court shall be deemed an action against  
25 the United States under the provisions of this title and all

1 references thereto, and the United States shall be substituted  
2 as the party defendant. After such substitution the United  
3 States shall have available all defenses to which it would  
4 have been entitled if the action had originally been com-  
5 menced against the United States under this chapter and  
6 section 1346 (b) .

7       “(2) Upon certification by the Attorney General that  
8 the defendant employee was acting within the scope of his  
9 office or employment, or in claims arising under the Con-  
10 stitution of the United States that the employee, other than  
11 an individual who is no longer an employee of the Govern-  
12 ment at the time a claim is presented to a Federal agency  
13 under this chapter and other than an appointee of the Presi-  
14 dent as defined in chapter 78 of title 5, United States Code,  
15 was acting within the scope of his authority or with a reason-  
16 able good faith belief in the lawfulness of his conduct at the  
17 time of the incident out of which the suit arose, any such  
18 civil action or proceeding commenced in a State court shall  
19 be removed, without bond, at any time before trial, by the  
20 Attorney General to the district court of the United States  
21 of the district and division embracing the place wherein it is  
22 pending and be deemed an action brought against the United  
23 States under the provisions of this title and all references  
24 thereto, and the United States shall be substituted as the  
25 party defendant. After such substitution the United States

1 shall have available all defenses to which it would have been  
2 entitled if the action had originally been commenced against  
3 the United States under this chapter and section 1346 (b) .  
4 The certification of the Attorney General shall conclusively  
5 establish that an employee was acting within the scope of his  
6 office or employment and in claims arising under the Con-  
7 stitution of the United States within the scope of his author-  
8 ity or with a reasonable good faith belief in the lawfulness  
9 of his conduct for purposes of such initial removal. Should a  
10 district court of the United States determine on a hearing on  
11 a motion to remand held before trial on the merits that the  
12 employee defendant was not acting within the scope of his  
13 office or employment and in claims arising under the Con-  
14 stitution of the United States within the scope of his authority  
15 or with a reasonable good faith belief in the lawfulness of his  
16 conduct the case shall be remanded to the State court in  
17 which it was initially filed.

18 “(3) Where an action or proceeding under this chapter  
19 is precluded because of the availability of a remedy through  
20 proceedings for compensation or other benefits from the  
21 United States as provided by any other law, the action or  
22 proceeding shall be dismissed, but in that event the running  
23 of any limitation of time for commencing, or filing an ap-  
24 plication or claim in, such proceeding for compensation or  
25 other benefits shall be deemed to have been suspended.



1 during the pendency of the civil action or proceeding under  
2 this chapter.”.

3 SEC. 8. Section 2679 of title 28, United States Code,  
4 is further amended by adding a new subsection (f) as  
5 follows:

6 “(f) Where an action or proceeding under section  
7 1346 (b) or 2672 arising under the Constitution of the  
8 United States results in a judgment against the United  
9 States or an award, compromise, or settlement paid by the  
10 United States, the Attorney General shall forward the matter  
11 for such further administrative investigation or disciplinary  
12 action, including action under chapter 78 of title 5, United  
13 States Code, as may be appropriate to the head of the de-  
14 partment or agency by which the employee whose viola-  
15 tion or act or omission gave rise to the claim was employed.”.

16 SEC. 9. (a) The preamble to section 2680 of title 28,  
17 United States Code, is amended to read as follows:

18 “Except for tort claims arising under the Constitution  
19 of the United States, the provisions of this chapter and  
20 section 1346 (b) of this title shall not apply to and the  
21 United States shall not substitute itself in ”.

22 (b) Section 2680 (h) of title 28, United States Code,  
23 is amended to read as follows:

24 “(h) Any claim arising out of libel, slander, misrepre-  
25 sentation, deceit, or interference with contract rights.”.

1       SEC. 10. (a) Subsections (a) through (d) of section  
2 4116 of title 38, United States Code, are repealed, and  
3 subsection (e) of that section is amended by deletion of  
4 the designation “(e)”, by deleting the words “person to  
5 whom the immunity provisions of this section apply (as  
6 described in subsection (a) of this section),” and inserting  
7 in lieu thereof the words “employee of the Department of  
8 Medicine and Surgery”.

9       (b) Subsection (a) through (c) of section 224 of the  
10 Public Health Service Act, as added by section 4 of the  
11 Act of December 31, 1970, and renumbered (42 U.S.C.  
12 233 (a) through (e) ), are repealed, and subsection (f) is  
13 amended by deletion of the designation “(f) ”.

14       (c) Subsections (a) through (e) of section 1091 of  
15 the Foreign Service Act of 1946, as added by section 119  
16 of the Act of July 12, 1976 (22 U.S.C. 817 (a) through  
17 (e) ) are repealed.

18       (d) Subsections (a) through (e) of section 1089, title  
19 10, United States Code, are repealed. Subsection (f) is  
20 amended by deleting the words “person described in sub-  
21 section (a) ” and inserting in lieu thereof the words “em-  
22 ployee of the Armed Forces, the Department of Defense,  
23 or the Central Intelligence Agency,”.

24       (e) Subsections (a) through (e) of section 307 of the  
25 National Aeronautics and Space Act of 1958, as added by

1 section 3 of the Act of October 8, 1976 (42 U.S.C. 2458a  
2 (a) through (e)), are repealed, and subsection (f) is  
3 amended by the deletion of the designation "(f)", by the  
4 deletion of the words "person described in subsection (a)"  
5 and by the insertion in lieu thereof the words "employee of  
6 the National Aeronautics and Space Administration".

7 SEC. 11. Section 2520, title 18, United States Code,  
8 shall not apply to civil causes of action against officers or  
9 employees of the United States while acting within the scope  
10 of their office or employment, or while acting under the color  
11 of such office or employment.

12 SEC. 12. The provisions of this Act shall apply to all  
13 claims and suits filed after the date of enactment hereof, and  
14 to all claims and suits pending on the date of enactment:  
15 *Provided, however,* That as to such pending claims and suits,  
16 or as to any causes of action known to an aggrieved party on  
17 or before the date of enactment, such claimant, plaintiff, or  
18 aggrieved party may elect to retain his right to demand a  
19 trial by jury or to request punitive damages if demanded or  
20 requested prior to the date of enactment in the case of a plain-  
21 tiff who has filed suit or if such right has not expired by the  
22 date of enactment in the case of such plaintiff, claimant, or  
23 aggrieved party. In a case in which a plaintiff elects to retain  
24 his right to jury demand or to request punitive damages, the  
25 provisions of section 3 of this Act relating to liquidated dam-

1 ages, waiver of absolute or qualified immunity, and attorneys  
2 fees shall not apply.

3 SEC. 13. Title 5, United States Code, is amended by  
4 adding immediately after chapter 77 a new chapter 78 con-  
5 taining a table of contents and new sections 7801, 7802,  
6 7803, and 7804, 7805, 7806, and 7807 as follows:

7 **"CHAPTER 78—EMPLOYEE DISCIPLINE**

"Sec.

"7801. Definitions.

"7802. Administrative inquiries generally.

"7803. Conduct of employees of the United States.

"7804. Conduct of former employees and Presidential appointees.

"7805. Individuals and bodies conducting inquiries and review.

"7806. Regulations.

"7807. Miscellaneous.

8 **"§ 7801. Definitions**

9 "For the purposes of this chapter—

10 "(a) 'Person' means any person with rights recognized  
11 under the Constitution of the United States;

12 "(b) 'Federal agency' means a Federal agency, as de-  
13 fined in section 2671 of title 28, United States Code, which  
14 employs or employed an 'employee' defined in subsection

15 (c) of this section;

16 "(c) 'Employee', unless otherwise described, means a  
17 present 'employee of the Government' as defined in section  
18 2671 of title 28, United States Code, and 'an employee paid  
19 from the appropriation for the office of the President' as de-  
20 fined in section 7324(d) (1) (a) of title 5, United States  
21 Code;

1       “(d) ‘Appointee of the President’ means an employee  
2 of the Government, other than a uniformed member of the  
3 Armed Forces or Coast Guard, a Public Health Service offi-  
4 cer, or a Foreign Service officer, appointed by the President  
5 with the advice and consent of the Senate; and

6       “(e) ‘Disciplinary action’ means removal, suspension  
7 without pay, reduction in rank or pay, admonishment or  
8 reprimand, or transfer, for such cause as will promote the  
9 efficiency of the service.

10   **“§ 7802. Administrative inquiries generally**

11       “(a) A person who obtains a monetary recovery from  
12 the United States on a tort claim under section 2675 or  
13 section 1346(b) of title 28, United States Code, arising  
14 under the Constitution of the United States, may within 60  
15 days thereafter request, as provided herein, an adminis-  
16 trative inquiry of the conduct alleged or found to have  
17 given rise to the claim.

18       “(b) A person who brings an action under section  
19 1346(b) on a tort claim arising under the Constitution of  
20 the United States may, not earlier than 60 days nor more  
21 than 120 days thereafter, request, as provided herein, an  
22 administrative inquiry of the conduct alleged to have given  
23 rise to the claim.

24       “(c) A Federal agency that undertakes to conduct an  
25 administrative inquiry of the conduct of one of its employees

1 may in its discretion invite a person believed to have been  
2 adversely affected by the conduct to participate in the ad-  
3 ministrative inquiry to the extent provided by sections  
4 7803 (b) and (e).

5 “(d) A person who has requested an administrative  
6 inquiry under subsection (b), or who has been invited to  
7 participate in an administrative inquiry under subsection  
8 (c), may not subsequently request an administrative in-  
9 quiry into the same conduct under subsection (a) or (b).

10 **“§ 7803. Conduct of employees of the United States**

11 “(a) A request under section 7802 (a) or (b) for an  
12 administrative inquiry with respect to the conduct of an  
13 employee of the United States shall be made to the head of  
14 the Federal agency, or his designee, by which the employee  
15 is employed. The request shall be accompanied by a written  
16 statement, certified and subscribed as permitted by section  
17 1746 of title 28, of such facts as are known to the person  
18 making the request regarding the conduct of the employee  
19 which is alleged to have violated such person's rights under  
20 the Constitution, and a request may be made with respect  
21 to the conduct of an employee whose identity is unknown  
22 if the request sets forth other information sufficient to permit  
23 the commencement of an inquiry.

24 “(b) The inquiry shall be conducted without delay by  
25 the head of the agency or his designee. If after preliminary

15

1 inquiry, the head of the agency or his designee finds that the  
2 matter is so unsubstantiated as not to warrant further in-  
3 quiry, he may, upon notice to the person under this subsec-  
4 tion, terminate such inquiry. A hearing shall be held with  
5 respect to the conduct of the employee if there is a genuine,  
6 material and substantial dispute of fact which can be resolved  
7 with sufficient accuracy only by the introduction of reliable  
8 evidence in a hearing and the decision of the agency in the  
9 matter is likely to depend on the resolution of such dispute.  
10 The person requesting the inquiry may appear and give  
11 testimony at any such hearing. In his sole and unreviewable  
12 discretion, the head of the agency or his designee may in the  
13 event of a hearing give to such person a reasonable op-  
14 portunity to examine and cross-examine witnesses and to sug-  
15 gest witnesses to be called and documents to be produced.  
16 The head of the agency or his designee shall determine  
17 whether disciplinary action is warranted, issue a statement  
18 of findings and state the nature and degree of any disciplinary  
19 action taken, and notify the person of the action taken by  
20 the agency and the reasons therefor.

21       “(c) Except as provided by subsection (e), within  
22 60 days after notification of the action taken by the agency,  
23 or if no final agency action has been taken within one year  
24 after the inquiry was requested, the person may request an  
25 administrative review by the appropriate individual or body

1 described in section 7805. The individual or body conduct-  
2 ing the administrative review shall conduct such review with-  
3 out delay and may substitute its judgment as to the appro-  
4 priate nature and degree of disciplinary action. If no final  
5 agency action has been taken, or if it is unable to conduct  
6 such review because it finds the record inadequate, it may  
7 remand to the agency for further proceedings or it may, in  
8 its discretion, supplement the record by taking additional  
9 evidence. [In the sole and unreviewable discretion, the in-  
10 dividual or body conducting the administrative review may  
11 in any proceeding to supplement the record give the person  
12 requesting administrative review a reasonable opportunity  
13 to examine and cross-examine witnesses.] The final decision  
14 shall be transmitted to the agency, the employee and the  
15 person requesting the review, and shall include a statement  
16 of findings and a recommendation which except as provided  
17 by section 7807 (d), shall be binding on the agency with  
18 respect to disciplinary action against the employee.

19 “(d) Except as provided by subsection (e), within 60  
20 days after the issuance of a final decision on an administrative  
21 review, the person requesting the inquiry may petition for  
22 review of the final decision by a district court of the United  
23 States, unless the conduct involved is that of a uniformed  
24 member of the Armed Forces as described in section 101 (4)  
25 of title 10, United States Code, in which event he may peti-



1 tion for review by the United States Court of Military Ap-  
2 peals. The court may deny the petition, affirm the decision, or  
3 set aside the decision and remand for further proceedings if it  
4 finds the decision to be arbitrary or capricious, or finds mate-  
5 rial factual determinations to be unsupported by substantial  
6 evidence, on the basis of its review of the decision, the reasons  
7 therefor, and the recommendation with respect to disciplinary  
8 action. The court's review shall be held in camera for matters  
9 specifically protected from disclosure by statute, by Executive  
10 order relating to the national security, national defense, or  
11 foreign affairs, or in the court's own discretion if it deter-  
12 mines that incamera review is necessary.

13       “(e) A person shall have the right to request an admin-  
14 istrative review under subsection (c) of this section and to  
15 petition for judicial review under subsection (d) of this sec-  
16 tion only when such person has obtained a monetary recovery  
17 from the United States on a tort claim under section 2675 or  
18 in a suit under section 1346 (b) of title 28, United States  
19 Code, alleged to have arisen under the Constitution of the  
20 United States, or when the agency or a court of the United  
21 States has found that the claim arises under the Constitution  
22 of the United States, unless the agency which conducted this  
23 inquiry under section 7803 (b) has in its discretion permitted  
24 a person to participate in such inquiry and consents to such

1 person's making a request or filing a petition for such admin-  
2 istrative and judicial review.

3 **"§ 7804. Conduct of former employees and Presidential**  
4 **appointees**

5 " (a) A request under section 7802 for an administrative  
6 inquiry with respect to the conduct of a former employee of  
7 the United States or a present or former appointee of the  
8 President shall be made to the appropriate individual or body  
9 described in section 7805.

10 " (b) The individual or body conducting an administra-  
11 tive inquiry under this section shall conduct such inquiry  
12 without delay and may in its discretion hold a hearing. Such  
13 individual or body shall prepare a written report of the  
14 results of the inquiry which shall include a statement of  
15 findings. Such report promptly shall be served on the  
16 former employee or present or former appointee of the  
17 President whose conduct has been the subject of the admin-  
18 istrative inquiry and not less than 20 days nor more than  
19 30 days thereafter shall be transmitted to the person request-  
20 ing such inquiry, to any other person whose rights under  
21 the Constitution of the United States are found to have been  
22 violated, and shall be made public. If, prior to the public  
23 release of the report, the former employee or present or  
24 former appointee of the President submits to the head of  
25 the agency or his designee a brief statement commenting

1 on the substance of the report, such statement shall accom-  
2 pany the report when it is transmitted to any person and  
3 when it is made public.

4 “(c) A person requesting such inquiry and a person  
5 whose conduct is the subject of an administrative inquiry  
6 under this section may, within 60 days after service upon  
7 him of the report of the inquiry, petition a district court of  
8 the United States to review the report. The court may  
9 deny the petition or set aside the report and remand it for  
10 further consideration if it finds the report to be arbitrary  
11 and capricious or finds material factual determinations to be  
12 unsupported by substantial evidence on the basis of its review  
13 of the report and the statement of findings.

14 **“§ 7805. Individuals and bodies conducting inquiries and**  
15 **review**

16 “An administrative inquiry under section 7804 or an  
17 administrative review under section 7803 (c) shall be  
18 conducted by—

19 “(a) the Secretary of Defense, or his designee, with  
20 respect to a uniformed member of the Armed Forces as  
21 described in section 101 (4) of title 10, United States  
22 Code;

23 “(b) the Secretary of the department in which the  
24 United States Coast Guard is operating, or his designee,  
25 with respect to a member of the Coast Guard;

1           “(c) the head of an agency with a personnel system  
2           under the Foreign Service Act of 1946, as amended (22  
3           U.S.C. 801 et seq.), or his designee, with respect to an  
4           officer or employee of the Foreign service;

5           “(d) the head of an agency with a personnel system  
6           under the Public Health Service Acts, as amended (42  
7           U.S.C. 201 et seq.), or designee, with respect to an  
8           officer or employee of the Public Health Service;

9           “(e) a body designated by the President within  
10          60 days of enactment of this Act, other than the Cen-  
11          tral Intelligence Agency, the Federal Bureau of In-  
12          vestigation, the National Security Agency, the national  
13          intelligence components of the Defense Department or  
14          the National Security Council and its component parts,  
15          with respect to the conduct of an officer or employee  
16          while engaged in intelligence activities; or

17          “(f) the Civil Service Commission, or its designee,  
18          in any other case.

19          “(g) A designee of a Secretary, agency head or  
20          entity described in this section, who conducts an ad-  
21          ministrative review shall not be responsible to or subject  
22          to the supervision or direction of any person who con-  
23          ducted the administrative inquiry under review.

24          “(h) No person who has been an employee of the  
25          Central Intelligence Agency, the Federal Bureau of

1 Investigation, the National Security Agency, the na-  
2 tional intelligence components of the Defense Depart-  
3 ment, or the National Security Council or its component  
4 parts during the preceding 2 years may be appointed  
5 to serve on the body designated to conduct an ad-  
6 ministrative review under subsection (e) of this section.

7 **“§ 7806. Regulations**

8 “(a) Within 90 days after enactment of this chapter,  
9 the individuals and bodies described in section 7805 shall  
10 propose such regulations as are necessary and appropriate  
11 for the implementation of this chapter.

12 “(b) The head of each Federal agency subject to the  
13 administrative review provisions of section 7803 (c) shall  
14 comply with the regulations issued by the particular ad-  
15 ministrative body designated by section 7805 to review  
16 administrative inquiries conducted by that Federal agency,  
17 and shall 60 days after the effective date of such regulations,  
18 issue rules, regulations, and instructions not inconsistent  
19 therewith.

20 “(c) For purposes of promulgating regulations pursu-  
21 ant to this section, the body designated under subsection  
22 (c) of section 7805 shall be an ‘agency’ of the Govern-  
23 ment within the meaning of section 551 of title 5, United  
24 States Code (the Administrative Procedure Act).

1       “(d) All regulations issued under this section shall be  
2 published for public comment and subject to judicial re-  
3 view under chapters 5 and 7 of this title.

4       “§ 7807. Miscellaneous

5       “(a) Nothing in this chapter shall affect the rights of  
6 an employee to appeal or to seek review or other means  
7 of redress of any disciplinary action taken against him which  
8 he would have under other provisions of law. To the ex-  
9 tent that an employee has exercised rights to administrative  
10 or judicial review which are greater than those provided in  
11 subsection (c) or (d) of section 7803 to a person request-  
12 ing an administrative inquiry, such person shall have the  
13 same rights as such employee: *Provided, however,* That an  
14 employee, who is the subject of a disciplinary action recom-  
15 mended by the Civil Service Commission, pursuant to sub-  
16 section 7803 (c), shall not be required by any other provi-  
17 sion of law to take an appeal to the Commission prior to  
18 seeking judicial review of that action.

19       “(b) An employee who is not entitled under other pro-  
20 visions of law to seek administrative or judicial review of  
21 disciplinary action taken against him may, if an administra-  
22 tive review is conducted under section 7803 (c), participate  
23 in such review and give evidence or testimony if a hearing is  
24 held, and, to the extent provided by section 7803 (d), may  
25 petition for judicial review of a final decision if any dis-

1 disciplinary action recommended under subsection 7803 (c) is  
2 greater than that proposed by the employing Federal agency.

3 “(c) Nothing in this chapter shall affect the availability  
4 of defenses which an employee may raise in any administra-  
5 tive or judicial proceeding.

6 “(d) Nothing in this chapter shall require a Federal  
7 agency to delay taking disciplinary action against an em-  
8 ployee or empower the Civil Service Commission to reduce  
9 the severity of disciplinary action taken by an agency  
10 against an employee who would not have a right to seek  
11 the Civil Service Commission's review of such action under  
12 other provisions of law.

13 “(e) Nothing in this chapter shall authorize a Federal  
14 agency to delay or refrain from taking disciplinary action  
15 against an employee in the absence of a request filed under  
16 section 7802 (a) or (b).

17 “(f) On or before June 30 of each calendar year, the  
18 President shall submit to the Speaker of the House and the  
19 President of the Senate a report for the preceding calendar  
20 year separately listing for each Federal agency the number  
21 of administrative inquiries undertaken pursuant to this chap-  
22 ter, a brief description of the nature of the inquiries, any  
23 administrative or judicial review thereof, and the ultimate  
24 disposition thereof.

1       “(g) Notwithstanding any provision of law to the con-  
2 trary, any party in an action for judicial review of agency  
3 action under sections 7803 (d) and 7804 (c) shall be entitled  
4 to recover from the United States reasonable attorneys’ fees,  
5 fees and costs of experts, and other reasonable costs of litiga-  
6 tion, including taxable costs, incurred during judicial review  
7 if the court affords such person the relief sought in substan-  
8 tial measure. Reasonable attorneys’ fees and other costs of  
9 litigation awarded under this section shall be based upon pre-  
10 vailing market rates for the kind and quality of the services  
11 furnished.”.



95TH CONGRESS  
2d Session

# S. 3314

## A BILL

To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, and for other purposes, and to amend title 5 of the United States Code to permit a person aggrieved by a constitutional injury to initiate and participate in a disciplinary inquiry of the offending act or omission.

By Mr. METZENBAUM

JULY 18 (legislative day, MAY 17), 1978

Read twice and referred to the Committee on the  
Judiciary